

BEFORE THE FLORIDA JUDICIAL QUALIFICATIONS COMMISSION

INQUIRY CONCERNING A  
JUDGE, No. 04-239,

JUDGE RICHARD H. ALBRITTON, JR.

Florida Supreme Court  
Case No. SC05-851

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**JUDICIAL QUALIFICATIONS COMMISSION’S RESPONSE**  
**TO JUDGE ALBRITTON’S MOTION FOR REMAND**

The Florida Judicial Qualifications Commission (“JQC”), through its Special Counsel, files its Response to Judge Albritton’s Motion for Remand or Reopen 6(b) Proceedings and states as follows:

**I. INTRODUCTION**

Judge Albritton seeks an order remanding this proceeding to the Investigative Panel of the JQC based upon the deposition testimony of two (2) witnesses. Coincidentally, the 2 witnesses – Mr. White and Ms. Berlin – are the 2 individuals who provided Judge Albritton with affidavits that he used to initially defend himself before the Investigative Panel. Both are advocates for the Judge, but more fundamentally to the present motion, their deposition testimony provides absolutely no basis for remand, and, at best, simply creates issues of fact which the Hearing Panel is capable of addressing at the appropriate time.

**II. SUMMARY OF RELEVANT FACTS**

Judge Albritton’s tactics, although unfortunate, are becoming increasingly clear – to zealously engage in *in personam* attacks against those the JQC has listed as witnesses

against him, rather than defend his judicial conduct. The Judge cites to the only 2 depositions he has taken in the case, who happen to be from his ardent supporters.<sup>1</sup>

A. ZACHARY WHITE

The Judge first took the deposition of Mr. White on February 3, 2006. Mr. White worked as a subordinate to Tara Melton in the Department of Children and Families (“DCF”) in the Fourteenth Judicial Circuit for several months in late 2003 and early 2004. (Depo. p. 65). Ms. Melton, an African-American woman, was specifically identified in several paragraphs of the Formal Charges against Judge Albritton, paragraphs 14 through 16, 18 and 21.

Mr. White gave testimony that, at best, creates a few factual issues. For example, in paragraphs 14 through 16 of the Amended Formal Charges it is alleged that Judge Albritton treated Ms. Melton in a demeaning fashion. To the contrary, Mr. White stated that in the few months he worked with Ms. Melton he did not observe this practice. (Depo. pp. 15-16). Mr. White’s opinions, even if believed, do not address many of the allegations regarding Ms. Melton, such as Judge Albritton referring to African-Americans as “your people” in addressing Ms. Melton (Depo. p. 41).

Judge Albritton also fails to mention in his Motion that Mr. White’s own credibility is in question when it comes to his observations about Ms. Melton. Mr. White was her subordinate and felt that she forced him to leave his job at DCF because of her criticisms of his performance. (Depo. p.34). He acknowledges that he and Ms.

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<sup>1</sup> Relevant portions of the depositions of Zachary White (02-03-06) and Kara Berlin (02-07-06) that were taken in this matter, are attached hereto and made a part hereof by reference.

Melton “parted on bad terms.” (Depo. p. 76). He also betrayed his bias against Ms. Melton when he used his answers to deposition questions as a platform to give a diatribe against her. For example, Mr. White was asked by the Judge’s counsel:

“And when did you leave there [DCF]? What was your last day?”

This is a simple, direct question that a witness would normally be expected to answer in a few words, providing the last date of his work at the job. Instead, Mr. White’s answer was:

“I think it was February of ’04. Now, mind you, I was the – I think I was the fifth attorney that office had had in the last two years. And Ms. Melton had something bad to say about every other attorney who had been in that office except another black female who was her cousin.” (Depo. p. 39)

To begin where the JQC started with Mr. White, he does no more than create some issues of fact. He does this, however, with a heavy cloud of bias against Ms. Melton hanging over his head. To suggest his testimony is a basis for remand to consider Mr. White’s “new” testimony is unwarranted. The Judge fully knew of Mr. White’s testimony **before** he appeared in front of the Investigative Panel and, in fact, presented Mr. White’s affidavit to that panel.

## B. KARA BERLIN

Several days after taking Mr. White’s deposition, Judge Albritton took the deposition of the other person who provided him with an affidavit to submit to the Investigative Panel, Kara Berlin. Just as Judge Albritton used the testimony of Mr. White to attack Ms. Melton, he used Ms. Berlin’s testimony to attack both Jennifer

Wells, the Court Administrator of the Fourteenth Judicial Circuit, and the investigator for the JQC, Robert Butler. While he attempts to create a diversion by impugning the procedure the JQC's investigator used to interview Ms. Berlin (which is highly contested), the deposition testimony of Ms. Berlin backfires on Judge Albritton because it largely supports the allegations of the Formal Charges.

1. Attacks against Jennifer Wells.

In her deposition, Ms. Berlin initially claimed that she was approached on three separate occasions by Ms. Wells, who asked her to make complaints to Judge Wolf of the JQC about Judge Albritton. (Depo. pp. 78-79). Curiously, Ms. Berlin said there was nothing that Ms. Wells asked her to complain about – just make a complaint. (Depo. pp. 78-79). This, of course, makes no sense. Contacting the JQC to say “I complain” about Judge Albritton, but when asked to identify the substance of the complaint and having to answer “Well, I don’t really know” is a story line that is very difficult to believe. On cross examination, what really happened became clear. Ms. Berlin **approached** Ms. Wells about specific complaints Ms. Berlin had against Judge Albritton (Depo. pp. 79-80), but she cannot remember if Ms. Wells then advised her to report her complaints to the JQC. (Depo. pp. 79-80). This is obviously the scenario that makes the most sense, and is very different from the story argued by Judge Albritton in his motion.

Next, Ms. Berlin testified that Ms. Wells had a meeting with her and said that she had a serious incident with Judge Albritton and decided to pursue it. She allegedly asked Ms. Berlin to help her find additional instances of misconduct by Judge

Albritton. Ms. Wells did not have to go far, because one of the most serious allegations – that Judge Albritton had threatened to put Ms. Wells in jail – was admitted in Ms. Berlin’s deposition testimony<sup>2</sup>. Ms. Berlin was contacted by Judge Albritton after the preliminary JQC Charges were made. In a conversation in the Judge’s chambers he admitted to Ms. Berlin that:

“He [Judge Albritton] told me they [Judge Albritton and Ms. Wells] had a – I don’t know that he used the word ‘fight,’ but he told me they had an incident or a disagreement or something. And she had been – I don’t remember what he said she said, but I do remember that he was kind of laughing and he told me that he told her she needed to – that he would – he told her he would **throw her in jail** or something. It was the same thing she had said. It was one of those where, you know, you hear the two sides of the story, so that part I remember because he had – or to keep out of his chambers or **he’d have her arrested**, something like that. It was very similar to what she had said.” (emphasis added) (Depo. p.83)

With respect to the other statements of Ms. Berlin, the Hearing Panel will simply have to wait for Ms. Wells’ testimony before deciding how much of Ms. Berlin’s remaining testimony is to be believed.

## 2. Attacks on Robert Butler.

Ms. Berlin began her testimony on this subject by saying that she initially agreed to talk to Robert Butler, the JQC’s investigator (Depo. p. 50), but later said she reconsidered and told him she did not want to talk to him. (Depo. p. 50). She "perceived" that the JQC investigator threatened her with a bar grievance if she did not cooperate. (Depo. pp. 52-53). In spite of Mr. Butler’s alleged tactics, Ms. Berlin

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<sup>2</sup> See paragraph 1 of the Formal Charges.

testified that she told him the truth during the interview and did not feel pressured to fabricate anything. (Depo. pp. 54, and 72-73). The interview occurred at the courthouse (Depo. p. 51), not a “star chamber.”

Needless to say, Mr. Butler strongly contests what Ms. Berlin had to say about the alleged pressure and threats. By way of background, Mr. Butler served as a special agent with the Federal Bureau of Investigation for 24 years, and for the last 8 years he has served as an investigator for the JQC (Butler Affid.) This is the first time he has ever been accused of threatening a witness in a JQC proceeding. (Thomas C. MacDonald, Jr. Affid.) Mr. Butler has been given a copy of Ms. Berlin’s deposition, and his rebuttal affidavit is submitted herewith. In it, he acknowledges that Ms. Berlin was initially a reluctant witness, but she agreed to be interviewed after he explained to her his role as a JQC investigator. Notably, she agreed to speak to him under the procedure **she** outlined – he would ask the questions and she would decide whether or not she wanted to answer them. (Butler Affid.) He strongly denies any threats against her of bar complaints, or otherwise. (Butler Affid.) As an aside, it is difficult to imagine that a lawyer, who has passed the Florida Bar examination, and practiced law for several years could reasonably believe the threats allegedly made by Mr. Butler.

3. Berlin admits the JQC claims.

The sideshow Judge Albritton presents about Mr. Butler notwithstanding, Ms. Berlin in her deposition testimony supports the Formal Charges against Judge Albritton for which she provided evidence. The portion of the Formal Charges in which

Ms. Berlin is identified directly, and her deposition testimony with respect to those Charges, is:

Formal Charges	Deposition Testimony
<p><u>Paragraphs 3-4:</u> Judge Albritton advised Ms. Berlin not to talk to Assistant State Attorneys, yet the Judge during breaks in trials would sit in the Public Defender's Office in the courthouse in his robes.</p> <p><u>Paragraph 5:</u> During a sentencing Judge Albritton ordered the defendant, as a condition of probation, to attend church. Ms. Berlin told the Judge that was unconstitutional, to which the Judge responded, "I know that's wrong but the defendant doesn't know it."</p> <p><u>Paragraph 9:</u> The Judge was routinely late for hearings and trial.</p>	<p><u>Pages 38-46 and 61-64:</u> Ms. Berlin admits that Judge Albritton told her that she should not speak to prosecutors because she was seen as an extension of the judge, yet during trial breaks the Judge would sit in the Public Defender's office in his robes, even when he was in the middle of a trial with the Public Defender. Ms. Berlin considered this inappropriate.</p> <p><u>Pages 66-69:</u> Ms. Berlin admitted that Judge Albritton did indeed make the church attendance a condition to probation, and after the hearing she warned the Judge that the sentence could not be upheld if appealed. He replied that he knew it was unenforceable but the defendant did not know that. Further in the affidavit Ms. Berlin filed in support of Judge Albritton before the Investigative Panel she further acknowledged this incident.</p> <p><u>Page 64:</u> She admitted that Judge Albritton was routinely late for court.</p>

Thus, in her deposition, where she presumably no longer felt "threatened," Ms. Berlin again corroborated the Formal Charges applicable to her interview. In fact, she went further and corroborated **other** Charges as well:

Formal Charges	Deposition Testimony
<p><u>Paragraph 1:</u> It is alleged <i>inter alia</i> that Judge Albritton threatened to hold the Court Administrator [Ms. Wells] in contempt of court if she disobeyed his order not to do anything associated with him or his office.</p>	<p><u>Page 83:</u> Ms. Berlin testified that Judge Albritton admitted to her that he had threatened to have the Court Administrator "arrested" or thrown "in jail," and laughed while regaling her with this story.</p>

Finally, Ms. Berlin is a witness who Judge Albritton not only knew about long ago, but used before the Investigative Panel, in submitting her affidavit as part of his defense. Certainly, her testimony is nothing new and unexpected for which he should be entitled to try to seek remand to present this “new” evidence to the Investigative Panel.

#### 4. Ms. Berlin's Admitted Bias

Judge Albritton obviously selected with great care the people from whom he would seek affidavits to present to the Investigative Panel. He picked people with an axe to grind. The bias that Mr. White had against the perceived accuser Ms. Melton, is perhaps even surpassed by the bias Ms. Berlin harbors towards Ms. Wells. Ms. Berlin left her staff attorney position with the 14th Judicial Circuit with great animosity towards Ms. Wells. She believes, rightly or wrongly, that she has been “ripped-off” by the Circuit, which owes her a lot of money (Depo. p. 84-85). The 14th Circuit denies that it owes her money (Depo. p. 86), which has left her very upset with the Circuit in general and Ms. Wells in particular. (Depo. p. 86-87). As a result, she has "unfavorable feelings" towards Ms. Wells. (Depo. p. 87).



In contrast to her ill feelings toward Ms. Wells, Ms. Berlin unabashedly admits that she has “favorable” feelings towards Judge Albritton. (Depo. pp. 75, 88) When she provided Judge Albritton with her affidavit, she was working for the judge at the time (Depo. p. 70), and believed her loyalty was to him. (Depo. pp. 74-75) That is the reason she did not want to “get involved” in the JQC investigation, and would not want to do anything hostile to the Judge unless she felt he had done something that in her eyes was “egregious.” (Depo. pp. 74-75)

### **III. LEGAL ARGUMENT**

There is no provision in the JQC Rules, nor any other authority cited by Judge Albritton, that permits the relief that he is seeking – a remand of this proceeding to the Investigative Panel to presumably reconsider the evidence, or reopen the proceeding for receipt of new evidence, on the issue of whether probable cause of the Formal Charges exists. This is nothing less than the Judge, having failed in his first appearance before the Investigative Panel, seeking the proverbial “second bite at the apple.” For several independent reasons, his motion should be denied.

#### **A. NO LEGAL PROVISION FOR THE RELIEF.**

There is no basis under any rules or statutes for a remand of this proceeding to the Investigative Panel. Furthermore, there is no case law that supports Judge Albritton’s motion for remand. The Judge’s arguments represent yet another attempt to distract from the merits of the case and to delay its resolution, and, therefore, his motion should be denied.

First, there is no basis for a Motion for Remand to the Investigative Panel in the JQC Rules, and Judge Albritton cites no rule or statute in support of his motion. JQC Rule 6 governs the conduct of the Investigative Panel and simply provides that when the Investigative Panel finds probable cause, it “shall” file those Charges. Nowhere do the Rules provide for the Hearing Panel to remand Formal Charges to the Investigative Panel. Once the Investigative Panel has found probable cause, the case then proceeds to the Hearing Panel for resolution. The Hearing Panel will then hear the evidence and decide what, if any, punishment is warranted.

Furthermore, the cases Judge Albritton cites in support of his Motion for Remand undermine, rather than advance, his argument. The Judge must first be corrected regarding his argument that the JQC is an arm of the Florida Supreme Court. This is inaccurate – the JQC was created under the authority of the Florida Constitution (*See* Constitution of the State of Florida, Article 5, Section 12). In any event, the cases cited by Judge Albritton to support the allegation that the JQC has assisted individuals in pursuit of their private agendas against Judge Albritton here are factually distinguishable and involve the resolution of cases presented in a very different procedural posture. They provide no authority whatsoever for this matter to be remanded to the Investigative Panel.

First, it should be noted that **none** of the cases Judge Albritton cites involve JQC proceedings and are readily distinguishable on that basis alone, but rather deal with discipline of attorneys. Furthermore, the Supreme Court did not remand **any** of the cases cited by Judge Albritton for further consideration. To the contrary, in almost

every case cited by the Judge, the Supreme Court affirmed the punishment of the offending lawyer in spite of allegations of wrongdoing by the Bar in the course of its investigation.

For example, the seminal case on the subject of misconduct by the Bar in the course of disciplining a lawyer is *Florida Bar v. Murrell*, 74 So. 2d 221 (Fla. 1954). In that case, the Florida Bar effectively handed over the entire process of instituting and carrying out the investigation of attorney Murrell to a third party. Although the Supreme Court condemned the Bar's acquiescence to a third party playing such a prominent role in a disciplinary proceeding, the Florida Supreme Court nonetheless upheld the suspension of the malfeasant attorney. The Court explicitly held that the Bar's mistakes in the process of prosecuting the case could not excuse the Attorney's misconduct. *Id.* at 227.

Similarly, in *Florida Bar v. Swickle*, 589 So. 2d 901 (Fla. 1991), the Court held that the Florida Department of Law Enforcement ("FDLE") Agent's involvement as both an investigator of Criminal Charges against an attorney and as a witness at his disciplinary proceeding, did not prevent the imposition of punishment. Nor did the Bar's alleged misconduct require the Charges to be remanded to any lower tribunal. Rather, the Court held that the State's criminal investigation and the Bar's investigation of the attorney were separate and distinct and that the FDLE agent was permitted to testify as a witness at the Attorney's disciplinary proceeding. The Court affirmed the punishment imposed on the lawyer.

The Florida Supreme Court reversed the entry of sanctions against the disciplined attorney in only one case cited in Judge Albritton's motion. In *Florida Bar v. Rubin*, 362 So. 2d 12 (Fla. 1978), the Supreme Court held that the Bar's multiple failures to follow its own procedures resulted in prejudice to the investigated Attorney and reversed the Bar's imposition of sanctions. In *Rubin*, the Bar repeatedly failed to follow procedures related to timeliness of filing, resulting in significant delays in the prosecution of the case and prolonging the negative stigma experienced by the investigated attorney. Additionally, the bar prematurely issued press releases detailing the allegations against the Attorney without giving the Attorney the necessary opportunity to object to such a disclosure.

*Rubin* can be contrasted with the JQC's conduct in this case which, even assuming the truth of every fact in Judge Albritton's Motion, certainly is "not serious enough to warrant dismissal." *Florida Bar v. Greenspan*, 708 So. 2d 926 (Fla. 1998) (citing *Rubin*) Judge Albritton cites no procedure or rule that the JQC's investigation has violated. Instead, he makes spurious allegations of generalized misconduct which, as detailed above, wholly fail to support this motion. The alleged misdeeds on the part of the JQC were not failures to follow procedural requirements as was the case in *Rubin*. To the contrary, the JQC has scrupulously observed all of the JQC's Rules and has at all times sought to prosecute this case in a professional manner.

#### B. NO FACTUAL BASIS.

Even if Judge Albritton could find legal support for his argument for remand, he cannot find the facts on which to base it.

1. Nothing New

The Judge relies upon the deposition testimony of two witnesses who a **year** earlier provided him with affidavits to submit to the Investigative Panel. Judge Albritton, and his attorney, spoke to both of these people before their affidavits were provided to the Investigative Panel (Berlin Depo. p. 65; White Depo. pp. 70-71), and certainly knew or should have known what they would later say in depositions. If the Judge now wants to make a different tactical decision on how to use their testimony - now claiming that the JQC has allowed two antagonists of Judge Albritton to subvert its processes - he is free to do so at the final hearing before the Hearing Panel. This, however, provides no justification for a remand.

2. Creates, At Best, Issues of Fact

The deposition testimony Judge Albritton relies upon creates some issues of fact on a few points, but on others serves to solidify many of the Charges against him. All of this can be addressed at the hearing on the Formal Charges.

Certainly, the Investigative Panel had the right to weigh the evidence provided regarding Judge Albritton, and determine whether probable cause existed. Since the Judge denied some of these Charges and presented evidence to rebut others, and in spite of this evidence the Panel still ruled against him, no useful purpose will be served in repeating the exercise even if there is a dispute concerning the facts on several Charges. Disputed issues of fact existed before the Panel made its ruling, and disputes exist now. Nothing has changed. In fact, if there were **no** disputed issues of fact there

would be no need for the Hearing Panel to do anything but decide the Judge's punishment.

3. The Butler Claims are Red Herrings.

Finally, the claims of threat and pressure by the JQC investigator are also unavailing. First, the Charges are contested by a man that served in the FBI for 24 years, and as a JQC investigator for 8 years without any questions ever being raised about his professionalism and integrity. Second, even if **everything** Ms. Berlin said is true, it would not detract from a single Charge leveled against the Judge. Ms. Berlin has admitted she told the investigator the truth, and in her deposition she has corroborated the evidence supporting the Formal Charges. As a consequence, the allegations about Mr. Butler are nothing more than a red herring designed to take the spotlight off of Judge Albritton's conduct.

#### IV. CONCLUSION

Judge Albritton's motion is difficult to understand. He has taken the depositions of his two most ardent supporters, people from whom he secured affidavits **before** the initial hearing before the Investigative Panel. One of whom was his subordinate at the time. He now offers their testimony to support a motion to remand the matter to the Investigative Panel to presumably hear their testimony again. Yet, Judge Albritton has not offered the Hearing Panel any explanation why he has suddenly been alerted to some "new" testimony that should be reconsidered in deciding if the Formal Charges were warranted. This transparent tactic should not be countenanced.

Even when the proffered testimony is considered, it does not advance the Judge's position. Perhaps, the Judge has demonstrated with respect to Mr. White's testimony that he may be able to raise issues of fact on a small number of the Charges against him<sup>3</sup>, but these can be resolved at the hearing. With respect to Ms. Berlin's testimony, Judge Albritton has badly damaged his defense on one of the central Charges against him. Moreover, the one feature of Ms. Berlin's testimony argued most vigorously for remand -- that she was pressured in submitting to an interview to the JQC -- is easily dismissed by a quick review of her testimony. She admits she gave honest answers, was not pressured to fabricate anything, and, most importantly, confirmed in her deposition the allegations in the Formal Charges attributed to her.

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and

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<sup>3</sup> Ironically, Mr. White and Ms. Berlin create an issue of fact in their respective testimonies, with Mr. White denying that Judge Albritton was late for Court (Depo. pp. 50-51) and Ms. Berlin testifying that he was routinely late for Court (Depo p. 64).

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by United States Mail this \_\_\_\_ day of March 2006 to:

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